

1991

# For-Shor Company v. David W. Early, Savage Construction Company, State-wide Construction, Tim Savage : Brief of Respondent

Utah Supreme Court

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Blake D. Miller; Marji Hanson; Hansen, Jones & Leta; Attorneys for Appellant.

Allan M. Metos; Counsel for Respondent.

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UTAH  
DOCUMENT  
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DOCKET NO

FOR-SHOR COMPANY, a Utah  
corporation,

Plaintiff,

**VS.**

DAVID EARLY, TRUSTEE;  
SAVAGE CONSTRUCTION COMPANY;  
STATEWIDE CONSTRUCTION COMPANY; and  
TIM SAVAGE;

Defendants.

CASE NO. 910024

PRIORITY NO. 16

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY

THE HONORABLE LEONARD H. RUSSON, PRESIDING

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FILED

JUL 23 1991

CLERK SUPREME COURT,  
UTAH

FOR-SHOR COMPANY, a Utah  
corporation,

**vs.**

Defendants.

PRIORITY NO. 16

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LIST OF PARTIES

1. APPELLANT

Labor Services, Inc.

2. DEFENDANT/RESPONDENT

David W. Early

3. PLAINTIFF (Not a party to this appeal)

For-Shor Company (Not a party to this appeal)

4. DEFENDANTS (Not a party to this appeal)

Savage Construction Company  
Statewide Construction  
Tim Savage

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## I. STANDARD OF REVIEW

In its Brief, Appellant, claims only questions of law are on appeal, which questions do not require deference from the Court. Appellant's Brief, however argues the inappropriateness of Judge Russon's Findings of Fact.

The Court must begin its analysis with the Trial Court's Findings of Fact and not with Appellant's view of the way it thinks the fact should have been found.

The Trial Court found it necessary to accept the fact that a clear interpretation of hour and wage statements of Appellant show that Appellant had completed its construction contract on the Early home and failed to file an action to foreclose the same within the one year statute of limitations.

If those findings are supported by the substantial and competent evidence in the record, they are clearly not erroneous under Rule 52(a) Utah Rules of Civil Procedure and will not be disturbed on appeal. Hanson v. Green Group 748 P.2d 1102 Utah Ct. App.

## II. ISSUES PRESENTED FOR REVIEW

1. Whether a sub-contractor who finishes work and completes its contract on October 19, 1989, can file an action to foreclose on a mechanic's lien on October 23, 1990, which is after the twelve month statutory period.

2. Whether a Notice of Lien which incorrectly describes the property being lienied by using a different lot number is insufficient to give notice of the lien and is therefore invalid.

### III. STATUTORY PROVISIONS

#### UTAH CODE ANN. Section 38-1-7(2)

**Notice of Claim - Contents - Recording - Service on owner of property.**

(2) This letter shall contain a statement setting forth the following information:

(a) the name of the reputed owner if known, or, if not known, the name of the recorded owner;

(b) the name of the person by whom he was employed or to whom he furnished the equipment or material;

(c) the time when the first and last labor or service was performed or the first and last day equipment or materials was furnished;

(d) a description of the property, sufficient for identification; and

(e) the signature of the lien claimant or his authorized agent and an acknowledgment or certificate is required for any notice filed after April 29, 1985, and before April 24, 1989.

#### UTAH CODE ANN. SECTION 38-1-11 (1988 & Supp. 1991).

**Enforcement - Time for - Lis Pendens - Action for debt not affected.**

Actions to enforce the liens herein provided for must be begun within 12 months after the completion of the original contract, or the suspension of work thereunder for a period of 30 days. Within the 12 months herein mentioned, the lien claimant shall file full record with the county recorder of each county in which the lien is recorded and notice of the pendency of the action, in the manner provided in actions affecting the title or right to possession of real property, or the lien shall be void, except as to persons who have been made parties to the action and persons having actual knowledge of the commencement of the action, and the burden of proof shall be upon the lien claimant and those claiming under him to show such actual knowledge. Nothing herein contained shall be construed to impair or affect the rights of any person to whom a debt may be due for any work done or materials furnished to maintain a personal action to recover the same.



#### IV. STATEMENT OF THE CASE

Appellant, Labor Services Inc. ("Labor Services"), rendered services on property owned by Respondent, David Early, commencing July 14, 1989 and continuing until October 19, 1989. On October 23, 1990, Labor Services filed a Motion to Intervene and for Declaratory Judgment in an action between David Early and For-Shor Co.

David Early objected to intervention upon the grounds that the Complaint was filed more than 12 months after the completion of the contract and was therefore statutorily barred. David Early further argued that the lien, itself, was not legally adequate in that it incorrectly identified the property being lienied, therein failing to comply with the mechanic's lien statute.

On November 19, 1990, Judge Leonard Russon ruled that Labor Services' claim and Notice of Mechanic's Lien did not comply with the requirements of the mechanic's lien statute. The said notice was insufficient to give notice of the lien upon Lot 112, Olympus Park Subdivision. Furthermore, Judge Russon ruled that Labor Services' action upon the lien was commenced more than 12 months after the last services of October 19, 1989. (Add. Ex No. 1.)

Judge Russon denied Labor Services' Motions for Declaratory Judgment and to Intervene in the above action. Respondent, David Early, asks this court to affirm Judge Russon's Order and Rulings.

### V. STATEMENT OF FACTS

1. The Defendant, David W. Early, as Trustee is the owner of real property more particularly described as follows:

Lot 112 Olympus Park Subdivision, Salt Lake County, Utah.

2. David Early contracted with Savage Construction as the general contractor to provide certain construction on the residence.

3. The Appellant, Labor Services, provided laborers for construction on the residence at the above described lot.

4. Appellant provided laborers on said project from July 22, 1989, until and including October 19, 1989. (R-96, 97, Add. Ex No. 2, Records of employment from the files of Labor Services Inc.)

5. In September 1989, Savage Construction was replaced as the general contractor by Val Paulsen, general contractor. (R-132, 133, 134, Affidavit of David Early, Add Ex No. 3.)

6. On December 14, 1989, Labor Services filed a lien which incorrectly identified the lot as:

Lot 12 Olympus Park Subdivision

the correct description of said lot is:

Lot 112 Olympus Park Subdivision. (R-65-66, Add. Ex No. 4)

7. Appellant filed action to enforce its lien on October 23, 1990, by filing with the District Court Clerk its Motion to Intervene and Cross Complaint, and Motion for a Declaratory

Judgment determining its lien valid even though it admittedly contains the wrong description of the lot in question.

#### VI. SUMMARY OF ARGUMENTS

Labor Services' action is barred because it failed to file its action within the twelve month statutory limitation as required by Utah Code Ann. 38-1-11.

Labor Services' work was never suspended and it is not entitled to claim the thirty day expansion of time for contractors whose work has been suspended. Labor Services worked continuously from July 22, 1989 through October 19, 1989, at which time the work was completed.

Appellate erroneously argues that the original contract between David Early and Savage Construction is the contract that determines when a sub-contractor can bring an action to foreclose on a lien. This absurd theory would allow sub-contractors to bring its action to foreclose on a lien at any time regardless of when the work was done, so long as the contract between the owner and the general contractor is not completed.

In this case Labor Services' original contract was with Savage Construction and that contract was completed on October 19, 1989. Because the action was filed on October 23, 1990, the statutory limitation period had passed and Labor Services' Motions must be dismissed.

David Early also argues that the description of the property on which the lien was placed was insufficient for identification.

The Notice of Lien was filed as Lot 12 Olympus Park Subdivision while the correct lot number is Lot 112 Olympus Park Subdivision. David Early argues that a Notice of Lien filed with the county recorder upon Lot 12 Olympus Park Subdivision would certainly not give notice that Lot 112 Olympus Park Subdivision was encumbered.

## VII. ARGUMENT

A. LABOR SERVICES, FAILED TO FILE ITS ACTION ON THE LIEN WITHIN THE TWELVE (12) MONTHS AFTER COMPLETION OF ITS ORIGINAL CONTRACT AS REQUIRED BY UTAH CODE ANN. SECTION 38-1-11.

1. Appellant's action is barred by Utah Code Ann. Section 38-1-11.

Under Section 38-1-11 U.C.A., when a lien claimant files its action to foreclose on its lien after the twelve month statutory period, the lien becomes void. Section 38-1-11 U.C.A. provides:

Actions to enforce the liens herein provided for must be begun within 12 months after the completion of the original contract.... Within the 12 months herein mentioned, the lien claimant shall file full record with the county in which the lien is recorded and notice of the pendency of the action... or the lien shall be void.

Utah Code Ann. Section 38-1-11 (1988 & Supp. 1991).

This court stated in AAA Fencing Co. v. Raintree Development & Energy Co., 714 P.2d 289, (Utah 1986), "The law is clear in this jurisdiction that a mechanic's lien foreclosure action must be brought within twelve months after the original contract between the lienor and the lienee is completed or relief will not lie." Id., at 291. The contract completion, according to Appellants own records was October 19, 1989. Labor Services has never claimed

that any work was done after October 19, 1989 nor has it argued that its contract was not completed. Labor Services' contract was completed, unfortunately, Labor Services failed to file its action to foreclose the lien until October 23, 1990 which was three days to late.

2. The contract of Labor Services was never suspended, its original contract was completed.

Under Utah Code Ann. 38-1-11 there are two statutory time limitations. A contractor must bring his action within twelve months of the completion day of the contract or twelve months after work has been suspended for a period of 30 days. The purpose of the expansion of time when work has been suspended is to provide a material man or laborer an opportunity to file an action even though his original contract was not completed. Often construction projects are suspended for different reasons such as lack of financing, building code violations, etc. Instead of forcing the contractor to wait for the completion of the contract, which might never come about, it allows a contractor an opportunity to bring an action on a lien if work has been suspended for 30 days or more.

Labor Services finding itself out on the "twelve month statute of limitations" now desperately seeks another avenue to escape by claiming a suspension of work. The contract of Labor Services was completed on October 19, 1989. There is no claim by Labor Services that its contract was not completed.

The Appellants have erroneously relied on the Mickelsen v. Craigco, Inc., 767 P.2d 561 (Utah 1989) and Totorica v. Thomas, 397 P.2d 984 (Utah 1985), which stand for the proposition that a

contractor does not have to wait until the contract is completed before he can bring an action to foreclose a lien, rather, the contractor may bring the action if the work has been suspended for more than 30 days. These two cases in fact support David Early's proposition that once the contract is completed the contractor must bring the action within the 12 month statutory time period.

Labor Services' contract was completed on October 19, 1989 and in order for it to bring an action to foreclose on the lien Labor Services needed to bring the suit within the 12 month period which it did not.

### 3. Labor Services original contract was with Savage Construction

Labor Services argue that the original contract between David Early and Savage Construction is the determinative contract which establishes the dates by which a lienholder can commence an action to foreclose on his lien. This theory is absurd and would result in chaos and uncertainty.

If a sub-contractor could rely on the completion time of the contract between the owner and the general contractor the sub-contractor could bring an action to enforce a lien possibly several years after his work was completed. This is contrary to the legislative intent. For example, if the contract between the owner and the general contractor lasted for ten years but the work of the sub-contractor was performed in the first year, under the Appellate's theory the subcontractor could bring the action to foreclose on his lien ten years after his work was performed.

Applying Appellate's theory defeats the purpose of the twelve month statutory limitation. In AAA Fencing Co. this court examined two Colorado cases that dealt with untimely joinders and stated:

Both in that case [Cox v. Bankers Trust Co., 570 P.2d 6 (Colo. 1977)] and in King v. W.R. Hall Transportation and Storage Co., Colo. 641 P.2d 916 (1982), the court stated that the strict application of the statutory limit was based on the principle that extending the lifetime of a perfected lien would vest a lien creditor with greater rights than were granted by the statutory provision creating the rights. In addition, strictly limiting the time during which property is encumbered renders titles to real property and to interests and estates therein more safe, secure, and marketable.

AAA Fencing Co., 714 P.2d at 292.

When Utah Code Ann. Section 38-1-11 is applied to subcontracts, it seems more in harmony with the legislative intent to view the contract between the sub-contractor and the general contractor as the "original contract". This would provide all contractors with the same rights regardless of whether they are general contractors or sub-contractors.

"The time for enforcing mechanic's liens set out in section 38-1-11, limits a lienor's rights to twelve months after his work is completed. At that point, both his rights and his remedies under the statute are extinguished." AAA Fencing Co., 714 P.2d at 292. Because the contract between Labor Services and Savage Construction was completed on October 19, 1989, the 12 month statutory limitation had already passed when Labor Services filed its action.

4. Original contract between David Early and Savage Construction was completed in September of 1989 which would bar recovery even if Appellate's theory is applied.

In September of 1989 the original contract between David Early and Savage Construction was completed when David Early replaced Savage Construction with Val Paulsen, general contractor. Savage Construction was asked to leave and it never returned.

Even if the Appellate's theory that the original contract between the owner and the general contractor is the determinative contract, Labor Services would still be barred by the 12 month statutory limitation because the original contract between David Early and Savage Construction was completed in September 1989. Labor Services did not bring its action until October 23, 1990 which is still outside the statutory limitation.

Because Labor Services failed to file its claim within one year after it completed its work on David Early's residence the Trial Court's Order Denying Motions to Intervene and for Declaratory Judgment must be affirmed.

B. THE LIEN FILED IS INVALID DUE TO ITS FAILURE TO PROPERLY DESCRIBE THE LOT IN QUESTION.

Utah Code Ann. Section 38-1-7(2)(d) requires "a description of the property, sufficient for identification." In December of 1989 Labor Services filed a lien on a lot that was not owned by David Early. The Notice of Lien incorrectly identified the property being liened. The Notice of Lien was filed as Lot 12 Olympus Park Subdivision, while David Early's property is Lot 112 Olympus Park Subdivision.



When a lien is filed with the county recorder it is filed by its legal description and not by the address of the property. A lien that is recorded at the county recorders office as being upon Lot 12 Olympus Park Subdivision would certainly not give notice that Lot 112 Olympus Park Subdivision was encumbered.

Judge Russon ruled that the notice was insufficient to give notice of a lien upon Lot 112 Olympus Park Subdivision. Judge Russon continued by explaining that the inclusion of the address did not cure the statutory requirement since the whole purpose of the Notice of Lien is for recording purposes and the county recorder does not file by address of property, but by legal description.

This court held in Graff v. Boise Cascade, 660 P.2d 721 (Utah 1983), that the doctrine of substantial compliance has some validity with regards to giving notice of intention to claim a lien, however, when there is a lack of substantial compliance with statutory requirements, the Notice of Lien is invalid. Essential averments omitted in the Notice of Lien, are incapable of being supplied by averment in the Complaint or by extrinsic evidence. See Morrison v. Willard, 17 Utah 19.

The requirement of Section 38-1-7(2)(d) which requires "description of the property sufficient for identification..." is not a hypertechnicality that the Court is free to discount but a description is a mandatory condition precedent to the very creation and existence of the lien. See First Security Management v.

Hanson, 631 P.2d 919 (Utah 1981) denying lien for lack of verification.

The filing of the lien upon Lot 12 Olympus Park Subdivision could not possibly give sufficient notice of an encumbrance upon Lot 112 Olympus Park Subdivision. Because the lien did not contain a description of the property, sufficient for identification, the lien must be held invalid. David Early asks the Court to affirm Judge Russon's ruling that the Notice of Lien filed by Labor Services is invalid.

#### CONCLUSION


The notice of Lien was invalid because it lacked "a description of the property, sufficient for identification." Utah Code Ann. 38-1-7(2)(d). A Notice of Lien upon Lot 12 Olympus Park Subdivision filed at the county recorder's office does not give notice that the property on Lot 112 Olympus Park Subdivision is encumbered.

Even if the Notice of Lien were legally sufficient, the filing of the action on October 23, 1990 was beyond the statutory limitation period provided in Utah Code Ann. 38-1-11.

For these reasons Respondent, David Early asks this Court to affirm the lower Court's Order and Ruling that Labor Services has no protection under the Utah mechanic's lien statute and deny Labor Services' Motion to Intervene.

David Early also requests the Court to award him reasonable attorney's fee and costs of appeal as provided for by Utah Code Ann. Section 38-1-18 (1988 & Supp. 1991).

DATED this 23 day of July, 1991.



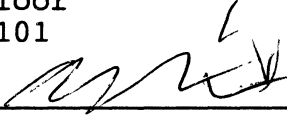
---

Allan M. Metos  
Counsel for Respondent  
David W. Early

CERTIFICATE OF SERVICE

I hereby certify that I mailed four copies of Respondent's Brief this 23rd day of July, 1991, postage prepaid to:

Blake D. Miller  
Marji Hanson  
HANSEN JONES & LETA  
Counsel for Appellant  
Labor Services Inc.  
50 West Broadway, 6th Floor  
Salt Lake City, Utah 84101



---

Allan M. Metos

## ADDENDUM

Tab 1

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----

FOR-SHOR COMPANY, a Utah corporation,	:	RULING ON LABOR SERVICES INC.'S MOTION TO INTERVENE
	:	
Plaintiff,	:	CIVIL NO. 900901033 CV
	:	
vs.	:	
	:	
DAVID W. EARLY, TRUSTEE;	:	
SAVAGE CONSTRUCTION COMPANY;	:	
STATEWIDE CONSTRUCTION; and	:	
TIM SAVAGE,	:	
	:	
Defendants.	:	

-----

Labor Services, Inc. has filed a Motion to Intervene, for Declaratory Judgment, and for Leave to File a Crossclaim in the above matter. The said Motions have been submitted to the Court for decision pursuant to Rule 4-501 of the Utah Code of Judicial Administration.

This action is a foreclosure action on two mechanic's liens brought by plaintiff For-Shor Company. The mechanic's liens pertain to plaintiff's materials utilized by other defendants on property owned by David W. Early, Trustee. Labor Services, Inc. moves to intervene on the basis of its own mechanic's lien as to services performed on the said property. Labor Services,

Inc.'s services were rendered on the property, commencing July 14, 1989 and continuing until October 19, 1989. Its Motion to Intervene was filed October 23, 1990.

Defendant David W. Early, Trustee, objects to the intervention upon the grounds that the Complaint was filed more than one year after the last services had been performed and, therefore, was statutorily barred. It further argued that the lien, itself, was not legally adequate in that it incorrectly identified the property being liened, therein failing to comply with the requirements of the mechanic's lien statute.

Labor Services Inc. argues that while it filed its Motion after the one year period, other mechanic's lienholders had filed the action within the one year period, that being on February 20, 1990. It also argues that its error in identifying the lot in the subdivision to be Lot 12 instead of Lot 112 was not an error sufficient to nullify the validity of the lien.

The Court rules as follows. Labor Services, Inc.'s claim and Notice of Mechanic's Lien does not comply with the requirements of the mechanic's lien statute. To derive the benefits of the mechanic's lien statute, a notice of lien must be filed "for record with the county recorder" and must



contain, among other things, "a description of the property, sufficient for identification." The said notice was insufficient to give notice of lien upon Lot 112, Olympus Park Subdivision. The inclusion of the address does not cure the statutory requirement since the whole purpose of the notice of lien is for recording purposes and the county recorder does not file by address of property, but by legal description.

Furthermore, Legal Services, Inc.'s action upon its lien was commenced more than one year after the last services of October 19, 1989. Even if the notice of lien had been legally sufficient, the action taken by Labor Services, Inc. on October 23, 1989 was beyond the limitation period.

For the reasons set forth above, Labor Services, Inc. has no protection under the mechanic's lien statute. Of course, it may still pursue its rights against the parties with whom it contracted on the debt.

Labor Services, Inc.'s Motion to Intervene is denied.

Counsel for David W. Early, Trustee, will prepare the Order.

Dated this 19 day of November, 1990.

15/ —  
LEONARD H. RUSSON  
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Ruling on Motion to Intervene, to the following, this \_\_\_\_day of November, 1990:

Duane A. Burnett  
Attorney for Plaintiff  
367 West 1600 South  
Salt Lake City, Utah 84115

Allan M. Metos  
Attorney for Defendant Early  
2180 South 1300 East, Suite 260  
Salt Lake City, Utah 84106

Blake D. Miller  
Marji Hanson  
Attorneys for Labor Services, Inc.  
50 W. Broadway, Sixth Floor  
Salt Lake City, Utah 84101

---

Tab 2

# LABOR SERVICES, INC.

• 000000

TERMS: DUE UPON PRESENTATION

WEEK ENDING DATE	INVOICE NUMBER
10/14/89	00095

PLEASE REMIT TO:

LABOR SERVICES, INC.  
60 CLEVELAND AVENUE  
SALT LAKE CITY, UT 84115

0352 STATE WIDE CONSTRUCTION INC.  
661 WEST 6960 SOUTH  
MIDVALE, UT 84047

NON-NEGOTIABLE

\$ \_\_\_\_\_  
AMOUNT ENCLOSED

PLEASE RETURN A COPY OF THIS INVOICE WITH YOUR REMITTANCE

ORDER NO	DATE	HOURS/UNITS	DESCRIPTION	RATE	AMOUNT
6530	10/10/89	15.00	SPENCER COLEMAN	12.50	187.50
6531	10/09/89	7.00	JENARO SALAZAR	12.50	87.50
6571	10/10/89	8.00	JONATHAN JOHN	12.50	100.00
6572	10/10/89	8.00	JENARO SALAZAR	12.50	100.00
6602	10/10/89	8.00	JERRY GILES	12.50	100.00
6625	10/11/89	2.00	JENARO SALAZAR	12.50	25.00
6626	10/11/89	2.00	JONATHAN JOHN	12.50	25.00
6631	10/11/89	2.00	JERRY GILES	12.50	25.00
6652	10/11/89	8.00	SPENCER COLEMAN	12.50	100.00
6913	10/12/89	8.00	SPENCER COLEMAN	12.50	100.00
0232	10/12/89	39.00	ROBERT BOONE	12.50	487.50
0233	10/12/89	40.00	BRUCE GALLOWAY	12.50	500.00

WE APPRECIATE YOUR BUSINESS

AMOUNT DUE ➡

1,837.50

8 00

PLEASE PAY ON THIS INVOICE

WE DO NOT SEND STATEMENTS

# LABOR SERVICES, INC.

TERMS. DUE UPON PRESENTATION

WEEK ENDING DATE	INVOICE NUMBER
10/21/89	00153

**PLEASE REMIT TO:**

**LABOR SERVICES, INC.**

60 CLEVELAND AVENUE  
SALT LAKE CITY, UT 84115


NON-NEGOTIABLE

\$ \_\_\_\_\_  
AMOUNT ENCLOSED

00352 STATE WIDE CONSTRUCTION INC.  
661 WEST 6960 SOUTH  
MIDVALE, UT 84047

MER  
2222

PLEASE RETURN A COPY OF THIS INVOICE WITH YOUR REMITTANCE

PK ORDER NO	DATE	HOURS UNITS	DESCRIPTION	RATE	AMOUNT
09880	10/19/89	23.00	BRUCE GALLOWAY	12.50	287.50
WE APPRECIATE YOUR BUSINESS					AMOUNT DUE  287.50

800

PLEASE PAY ON THIS INVOICE

WE DO NOT SEND STATEMENTS

**Labor Services, Inc.**

66 Cleveland Avenue  
Salt Lake City Utah 84115  
Telephone (801) 486-9567

CUSTOMER NAME				
ADDRESS OF JOB LOCATION				
REPORT TO	REPORTING TIME		AM PM	
CUSTOMER SIGNATURE <i>[Signature]</i>				
YOUR SIGNATURE CERTIFIES APPROVAL OF LISTED HOURS AND ACCEPTANCE OF TERMS AND CONDITIONS ON CUSTOMER COPY.				
DO NOT WRITE BELOW THIS LINE OFFICE USE ONLY.				
PONO	CUSTNO	EMPHO	REG HRS	OT HRS
	352	1363	23	0
PRATE	SRATE	JOB NO.		
2.00	12.50	8380		

EMPLOYEE NAME				SOCIAL SECURITY NUMBER	
<i>Bruce Galloway</i>				<i>31-11-1111</i>	
DAY	MONTH/DATE	TIME IN	TIME OUT	LESS LUNCH PERIOD	TOTAL HOURS
MON					
TUE	10/17	7:50	4:00		
WED	10/18	7:50	4:00		
THUR	10/19	7:50	4:00		
FRI	10/20	7:50		NOT WORKED	
SAT					
SUN					
WEEK ENDING DATE (SATURDAY)				TOTAL HOURS FOR WEEK	
THANK YOU					

FOUR HOUR MINIMUM PER EMPLOYEE PER DAY

WHITE OFFICE COPY

YELLOW CUSTOMER COPY

Tab 3

ALLAN M. METOS #2249  
Attorney for Defendant  
David W. Early  
Parkview Plaza, Suite 260  
2180 South 1300 East  
Salt Lake City, Utah 84106  
Telephone: (801) 363-5796

IN THE THIRD JUDICIAL DISTRICT COURT  
FOR SALT LAKE COUNTY, STATE OF UTAH

---ooo0ooo---

FOR-SHOR COMPANY, a Utah	:	
corporation,	:	
	:	AFFIDAVIT OF DAVID EARLY
Plaintiff,	:	
	:	
vs.	:	
	:	
DAVID W. EARLY, TRUSTEE; SAVAGE	:	
CONSTRUCTION COMPANY; STATEWIDE	:	
CONSTRUCTION; and TIM SAVAGE;	:	Civil No. 900901033 CV
	:	
Defendants.	:	Judge Russon
<hr/>		
LABOR SERVICES, INC. a Utah	:	
corporation,	:	
	:	
Cross-Claimant,	:	
	:	
vs.	:	
	:	
DAVID W. EARLY, TRUSTEE; SAVAGE	:	
CONSTRUCTION COMPANY; STATEWIDE	:	
CONSTRUCTION; and TIM SAVAGE;	:	
	:	
Cross-Claimees.	:	

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STATE OF UTAH            )  
                          : ss.  
COUNTY OF SALT LAKE )

David W. Early duly sworn, deposes and says:

1. That he is the owner and general contractor on the residence which is the subject matter of this action.

2. That Statewide Construction Company, the contractor who did the concrete foundations and walls on my home, was replaced in September, 1989, by Val Paulsen, general contractor. See attached Exhibit "2."

3. That there has never been a suspension of the original contract with Drier Associates, the architects and supervisors of the home's construction. Construction has been on going from April, 1989, through the present date with no suspensions of work.

4. That Labor Services was hired by For-Shor Concrete Pumping's insurance carrier to provide laborers to carry away construction debris from a concrete wall that was negligently installed and had to be removed. Labor Services provided no help that this Affiant is aware of after the month of September, 1989.

DATED this 21<sup>st</sup> day of November, 1990.

David W. Early  
DAVID W. EARLY

Subscribed and sworn to before me this 21<sup>st</sup> day of November, 1990.

Darlene Andersen  
Notary Public  
Residing at:

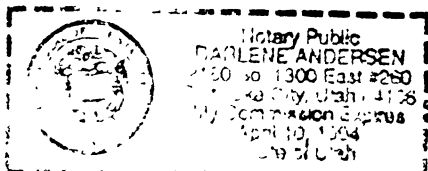
My Commission Expires:

April 10, 1994

Salt Lake City, Utah

aa.e-fsaff.de

2







October 2, 1989

To: All Suppliers & Subcontractors

David Early New Residence  
Lot #12 Olympus Park Subdivision  
3941 Parkview Drive  
Salt Lake City, Utah 84106

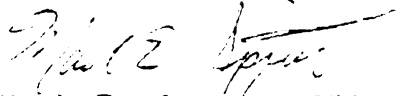
Dear Sir:

Due to commitments on other projects, Savage Brothers Construction will not continue as the General Contractor on this project. The responsibilities of the General Contractor will instead be taken over by this office.

Please review your bid in detail and then forward your itemized original or revised quotation to me for approval. Deduct all commissions, volume bonuses and crane time if they were part of your quotation.

We anticipate receiving your revised sealed bid as soon as possible.

Sincerely,

  
Mark E. Spjute, CPA  
Chief Financial Officer

cc: Lowell Kilpack, Savage Construction

Exhibit 2

Tab 4

**WHEN RECORDED, RETURN TO:**

Jon Guss  
66 Cleveland Avenue  
Salt Lake City, Utah 84115

**CLAIM AND NOTICE OF MECHANIC'S LIEN**

The undersigned, LABOR SERVICES, INC., by and through its President, Jon Guss, (the "Lien Holder") hereby gives notice of its claim and lien provided under Utah Code Ann. Sections 38-1-1 et. seq. as follows:

1. Lien Holder claims a lien upon the real property, buildings and improvements thereon, reputed to be owned by David Early. The total sum due at this date is approximately \$5,996.67.

2. On or about July 22, 1989, Lien Holder entered into a contract with State Wide Construction Inc. with respect to the construction of buildings and improvements and other related work and services on property located at 3941 South Parkview Drive (3915 East), Salt Lake City, Utah, and more particularly described as follows:

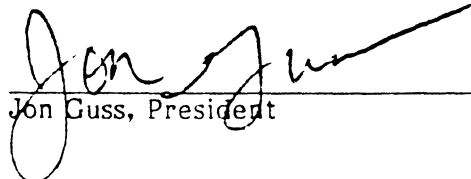
Lot 12 Olympus Park subdivision, according to the official plat thereof on file in the Office of the Salt Lake County Recorder, Salt Lake County, Utah.

3. Work was first commenced on the property on or before July 27, 1989. Labor, material and services were first performed and furnished by the Lien Holder on the ground on the property on or about July 27, 1989. Work was last performed on the Property and materials last supplied on or about October 21, 1989.

4. In carrying out the work under the above-mentioned contract, Lien Holder with the consent and at the request of Statewide Construction and/or its agent, furnished labor and/or materials as set forth in such contract. The total amount owed to Lien Holder, payment of which is secured by this lien, includes charges for the value of services performed and/or materials supplied with the consent and at the request of Statewide Construction and its agents, whether pursuant to the terms of the contract or otherwise.

LABOR SERVICES, INC.

By:

  
Jon Guss, President